

Message Text

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PAGE 01 NEW DE 00804 170830Z

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ACTION NEA-09

INFO OCT-01 ISO-00 EB-07 COME-00 RSC-01 /018 W

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P 170810Z JAN 75

FM AMEMBASSY NEW DELHI

TO SECSTATE WASHDC PRIORITY 6363

LIMITED OFFICIAL USE NEW DELHI 0804

NEA/INS FOR PETER LANDE

E. O. 11652: N/A

TAGS: EIND, IN

SUBJ: AGENDA FOR ECONOMIC/COMMERCIAL SUBCOMMISSION
MEETING - ADDITIONAL BRIEFING MATERIAL

1. PREMJI SINGH, PARTNER OF THE LAW FIRM OF BAKER AND MCKENZIE, CHICAGO, WHO HAS HAD WIDE-RANGING EXPERIENCE EXTENDING OVER MORE THAN 15 YEARS IN HANDLING THE CORPORATE AFFAIRS OF SEVERAL MAJOR US INVESTORS IN INDIA TOLD AN EMBASSY REPRESENTATIVE JANUARY 14 THAT, IN HIS OPINION, THE "MAJOR IRRITANT" TO US COMPANIES CONTEMPLATING EXPANSIONS IN INDIA (EITHER VOLUNTARILY OR AS PART OF THE DILUTION PROCESS UNDER FERA) ARE THE EXTREMELY RESTRICTIVE GUIDELINES ISSUED BY THE MINISTRY OF FINANCE (OFFICE OF THE CONTROLLER OF CAPITAL ISSUES) FOR THE CAPITALIZATION OF CAS RESERVES THROUGH THE ISSUANCE OF BONUS SHARES. THE GUIDELINES INTER ALIA STIPULATE THAT (A) NOT MORE THAN 66.7 PERCENT OF THE RESERVES MAY BE CAPITALIZED THROUGH THE ISSUE OF BONUS SHARES; (B) NOT MORE THAN TWO BONUS SHARE ISSUES WILL BE ALLOWED TO A COMPANY OVER A PERIOD OF FIVE YEARS; AND (C) AT ANY ONE TIME THE TOTAL AMOUNT APERMITTED TO BE CAPITALIZED FOR ISSUE OF BONUS SHARES OUT OF THE FREE RESERVES SHALL NOT EXCEED THE TOTAL AMOUNT OF THE PAID-UP EQUITY CAPITAL OF THE COMPANY. STIUPLATION C IS THE ONE THAT IS CAUSING THE MOST CONCERN TO US COMPANIES. THIS CONDITION WORKS AGAINST THE INTEREST OF THOSE US COMPANIES WHICH ARE CURRENTLY CONTEMPLATING SUBSTANTIAL EXPANSIONS IN

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INDIA OR THOSE CONFRONTED WITH THE PROSPECT OF SUBMITTING AN

ACCEPTABLE FINANCIAL PLAN TO THE GOI FOR DILUTION UNDER FERA THROUGH THE PRECESS OF EXPANDING THEIR EXISTING EQUITY BASE.

2. US COMPANIES WHICH THESE GUIDELINES AFFECT INCLUDE ABBOTT LABORATORIES, AMERICAN CYANAMID, INGERSOLL-RAND, AND MAREMONT CORPORATION. ALL HAVE EXPANSION PROJECTS AND/OR DILUTION PROGRAMS THAT ARE IN JEOPARDY BECAUSE OF THE GOI'S RELUCTANCE TO GRANT ANY EXCEPTION WHATSOEVER AUNDER THE GUIDELINES. THE COMPANIES INVOLVED GENERALLY BEGAN OPERATIONS IN INDIA IN THE PERIOD BEFORE INDIAN INDEPENDENCE OR IMMEDIATELY THEREAFTER ON A SMALL EQUITY BASE AND BUILT UP LARGE RESERVES WITH THE OBJECT OF UTILIZING THE RESERVES AT A LATER DATE FOR EXPANSION/DIVERSIFICATION.

3. THE GOI IMPOSED THESE RESTRICTIONS ON CAPITALIZATION OF RESERVES ON ALL FIRMS, INDIAN AS WELL AS JOINT VENTURES, TO AVOID CIRCUMVENTION OF THE 12 PERCENT CEILING ON DIVIDENDS WHICH WAS IMPOSED IN JULY 1974 AS AN ANTI-INFLATION MEASURE. THE FINANCE MINISTRY HAS SUGGESTED THAT THE US COMPANIES BRING IN NEW DOLLAR CAPITAL TO CARRY OUT THEIR EXPANSIONS. THE COMPANIES POINT OUT THAT THE RESERVES THEY HAVE ACCUMULATED COULD HAVE BEEN FREELY REPATRIATED DURING THE YEARS PRIOR TO THE DIVIDEND RESTRICTION. THEY HAVE ASKED THE GOI TO TREAT EACH CASE ON ITS MERITS INSTEAD OF IMPOSING A BLANKET RESTRICTION.

4. US MIGHT WISH TO ENCOURAGE GOI TO TAKE A MORE PRAGMATIC STAND ON REQUESTS FOR MODIFICATION OF THE GUIDELINES. MANY OF THE PROPOSED EXPANSION AND DIVERSIFICATIONS BEING CONTEMPLATED BY THESE FIRMS ARE HEAVILY EXPORT ORIENTED. SCHNEIDER

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: INTERGOVERNMENTAL COOPERATION, COMMITTEE MEETINGS, BRIEFING MATERIALS
Control Number: n/a
Copy: SINGLE
Draft Date: 17 JAN 1975
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: GolinoFR
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1975NEWDE00804
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: D750018-0547
From: NEW DELHI
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1975/newtext/t19750142/aaaabkxw.tel
Line Count: 92
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION NEA
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 2
Previous Channel Indicators: n/a
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: n/a
Review Action: RELEASED, APPROVED
Review Authority: GolinoFR
Review Comment: n/a
Review Content Flags:
Review Date: 14 APR 2003
Review Event:
Review Exemptions: n/a
Review History: RELEASED <14 APR 2003 by GolinoFR>; APPROVED <15 APR 2003 by GolinoFR>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
05 JUL 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: AGENDA FOR ECONOMIC/COMMERCIAL SUBCOMMISSION MEETING - ADDITIONAL BRIEFING MATERIAL
TAGS: EIND, IN, US
To: STATE
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 05 JUL 2006